



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO LAN LLC FOR OXFORD HILLS SUBDIVISION Unpermitted Activity

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and LAN, LLC regarding the Oxford Hills Subdivision for the purpose of resolving certain violations of State Water Control Law and Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
6. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "LAN LLC" means LAN LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. LAN LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
12. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

13. “Property” or “Parcel” means the tract of land at 66-10- L(A), referred to as Oxford Hills Subdivision, in Greene County, Virginia, owned by LAN LLC.
14. “Regulations” means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
16. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
17. “Surface water” means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. LAN LLC owns the Property, known as Oxford Hills, located to the West of 946 Matthew Mill Road, parcel number 66-10-L(A), in Greene County, VA. LAN is subject to the General VPDES Permit for Discharges of Storm Water from Construction Activities (CGP) Registration No. VAR102452, issued to LAN LLC on July 1, 2014 with an expiry date of June 30, 2019. LAN LLC does not have a Virginia Watershed Protection Permit.
2. On August 4, 2017, DEQ staff inspected the Property under the CGP. DEQ staff observed 18 deficiencies at the Property, with regards to the CGP. Under DEQ’s Construction Stormwater monitoring strategy, the inspection report was conveyed to LAN LLC, and the noncompliance was referred to the Virginia Stormwater Management Program Authority, Greene County. On August 16, 2017, DEQ staff reinspected the Property and observed approximately 1,450 linear feet of measureable sedimentation in the unnamed tributary to Preddy Creek from the Property. This incident was not reported to DEQ within 24 hours.
3. Va. Code §§ 62.1-44.5 states in part that: “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.

Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

4. Va. Code §§ 62.1-44.15:20 states that: “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: Excavate in a wetland; On or after October 1, 2001, conduct the following in a wetland: New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; Filling or dumping; Permanent flooding or impounding; or New activities that cause significant alteration or degradation of existing wetland acreage or functions; or Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
5. 9 VAC 25-210-50(A) states that: “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.”
6. Va. Code §§ 62.1-44.5(B) states in part that: “Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality...”
7. On August 31, 2017, DEQ issued NOV No. 1708-000493 to LAN LLC for unpermitted impacts to state waters.
8. On October 3, 2017, DEQ staff met at the Property with LAN LLC’s consultant and other representatives to discuss the NOV and observe correction actions taken at the Property since the NOV.
9. On December 11, 2017, LAN LLC submitted documentation to demonstrate stabilization measures, hand-removal of sediment, and logs of man hours dedicated to environmental response to DEQ to demonstrate progress towards return to compliance.
10. On June 5, 2018, LAN LLC notified DEQ of an unauthorized discharge at the Property. On June 8, 2018, DEQ staff inspected the Property in response to the notification, and LAN LLC was actively removing the sedimentation. LAN LLC asserts that the discharge was the result of extreme weather conditions.

11. On July 24, 2018, LAN LLC submitted documentation to DEQ, detailing the clean-up from the June 5, 2018 unauthorized impact, including a delay in clean up completion due to several, consecutive rain events.
12. On August 21, 2018, DEQ staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. DEQ observed that hand removal of the sedimentation was nearing completion, and subsequently requested additional stabilization to complete LAN LLC's return to compliance.
13. Based on the results of the August 4, 2017 and August 16, 2017 inspections and the October 3, 2017 meeting, the Board concludes that LAN LLC has violated Va. Code §§ 62.1-44.5, 62.1-44.15:20, and 9 VAC 25-210-50(A), as described in paragraphs C(2) through C(6), above.
14. LAN LLC has submitted documentation that verified that the violations described in paragraphs C(2) through C(11), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders LAN LLC and LAN LLC agrees to:

Pay a civil charge of \$15,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

LAN LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, LAN LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of LAN LLC for good cause shown by LAN LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1703-000285 dated March 31, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, LAN LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. LAN LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. LAN LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by LAN LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. LAN LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. LAN LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. LAN LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and LAN LLC. Nevertheless, LAN LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after LAN LLC has completed all of the requirements of the Order;
 - b. LAN LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to LAN LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve LAN LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by LAN LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of LAN LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind

LAN LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of LAN LLC.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, LAN LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2018.

Amy T. Owens, Regional Director
Department of Environmental Quality

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LAN LLC voluntarily agrees to the issuance of this Order.

Date: 10/29/2018 By: C.L. Collins MAN. MEMBER
(Person) (Title)
LAN LLC

Commonwealth of Virginia
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 29th day of October, 2018, by C.L. Collins who is man. member of LAN LLC, on behalf of the company.

Mary E Carter
Notary Public

316615

Registration No.

My commission expires: 7/31/22

Notary seal:



Mary E Carter
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #316615
My Commission Expires
July 31, 2022